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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,639	05/13/2002	Pedro Cunha	Q68790	9231
23373	7590	10/23/2003	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20037			FITZGERALD, JOHN P	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,639

Applicant(s)

CUNHA, PEDRO

Examiner

John P Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to because of the following informalities: replace “on” with “one” before bracket in line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1 the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). A similar argument applies to the term “or equivalent” which is recited in claim 1, line 4 and in claim 12, line 2. Claim 1 additionally recites the phrase “stepless locking” in line 14. Although negative limitations are permitted in claim terminology, the term “stepless” is considered indefinite, since any horizontal adjustment of a shelf between inner and outer end positions inherently involves a series of steps or motions. Additionally, claim 1 recites the limitation "the pull-out rails" in line 8. There is insufficient antecedent basis for this limitation in the claim. Claim two recites “one bracket” in line 3. It is unclear if the claim is referring to the “two brackets” recited in claim 1, or is claiming the limitation of an additional bracket. Claim 3 indefinitely recites in part: “in

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which it can be displaced relative to these” in lines 5 and 6. It is unclear what element(s) the phrase “to these” is/are referring, rendering the claim indefinite. A similar argument applies to the phrase “with these” in line 3 of claim 5. Claims 7 and 9 recite the limitation "said engagement surfaces" in line 1, respectively. There is insufficient antecedent basis for this limitation in the claim. Claim 7 recites the limitation “a rail” in line 2. It is unclear if the claim is referring to the previous “rails” recited in claim 1, or is reciting an additional rail. Lastly, claim 14 recites the limitation "those parts of the bracket” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. As best understood, claims 1, 2, 4 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mastrodiscasa and US 4,679,959 to Delmege et al. Mastrodiscasa discloses a pull-out shelf (6) for mounting on rack uprights (62) (Figs. 1-5) and comprising: two brackets (4) projecting from the uprights or from supports mounted thereon; at least one rail slot (28) in each bracket so as to be capable of allowing the shelf to be pulled out, and a shelf plane or equivalent supported by the rails, for articles which are to be placed on the shelf, which the shelf comprises at least one releasable locking member (40) (Fig. 5) that follows the movements of the shelf, which, when an associated operating member (48) is actuated manually (Mastrodiscasa: col. 3,

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line 67 to col. 4, line 7), releases the pull-out shelf, so that the shelf can be pulled out and pushed in, and, in the unactuated state, locks the shelf relative the brackets, characterized in that, when the operating member is unactuated, the locking member locks the shelf and the brackets under the action of a spring force (54), in that manual actuation of the operating member takes place counter to the action of the spring force, so that releasing the operating member results in instantaneous locking of the shelf in the current position so as to allow “stepless” locking of the shelf in optional positions between an inner and an outer end position. Mastrodicasa does not expressly disclose pull-out rails supporting the shelf; the locking of the rails by the locking member; a friction body projecting in between two engagement surfaces borne by one bracket of the shelf (as recited in claim 2); further comprising two locking members (as recited in claim 4); and wherein the engagement surfaces are formed by the legs of the rail with a U-shaped profile arranged on at least one bracket of the shelf (as recited in claim 7). US 4,679,959 to Delemege et al. teaches a pull-out rail slide (10) for shelves and drawers (Figs. 1-4) wherein locking of the rails (12, 19) by an operating member (29) and two locking members (43, 44), a rotatable friction body being arranged between two engagement surfaces (22, 23) that are formed by the legs of the rail with a U-shaped profile. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the rails and all of its elements, as taught by US 4,679,959 to Delemege et al., modifying the pull-out shelf disclosed by Mastrodicasa, thus providing a shelf with lockable slides that is operated by a handle and smooth operation of ball bearings (US 4,679,959 to Delemege et al.: col. 1, lines 28-60).

6. As best understood, claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mastrodiscasa and US 4,679,959 to Delmege et al. as applied to claim 1

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above, and further in view of Falk. Mastrodiscasa and US 4,679,959 to Delmege et al. disclose a pull-out shelf having all of the elements stated previously. Mastrodiscasa and US 4,679,959 to Delmege et al. do not expressly disclose a pull-out shelf characterized in that the U-shaped rail is borne by a lower horizontal flange of the bracket, further characterized in that the engagement surfaces are formed by a lower flange of at least one bracket of the shelf and by a lower edge of fixed guide rail which is borne by the bracket and in which the pull-out rail of the shelf runs. Falk teaches a pull-out shelf (Figs. 1-4) wherein a the shelf holder (30) slides on engagement surfaces (42, 44) formed by lower flanges (44) of brackets (22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the engagement surfaces of the rails disclosed by Mastrodiscasa and US 4,679,959 to Delmege et al., and employ an engagement surface of a lower flange for the U-shaped rail and its engagement surfaces, as taught by Falk, thus providing a unitized bracket and slide member.

7. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mastrodiscasa and US 4,679,959 to Delmege et al. as applied to claim 1 above, and further in view of Barber, Jr. Mastrodiscasa and US 4,679,959 to Delmege et al. disclose a pull-out shelf having all of the elements stated previously. Mastrodiscasa and US 4,679,959 to Delmege et al. do not expressly disclose a pull-out shelf characterized in that it comprises adjustable stop members which are adapted so as to allow adjustment of the location of the inner position of the shelf. Barber, Jr. teaches a pull-out rail system for drawers and shelves (Figs. 1-13) having adjustable stop members (60) attached to slide members (30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ adjustable stop members, as taught by Barber, Jr., modifying the pull-out shelf disclosed by Mastrodiscasa and US

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4,679,959 to Delmege et al., thus providing means to limit the inward movement of the pull-out shelf and to regulate where the shelf will stop (Barber, Jr.: col. 1, lines 17-24).

8. Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mastrodiscasa and US 4,679,959 to Delmege et al. as applied to claim 1 above, and further in view of Albano. Mastrodiscasa and US 4,679,959 to Delmege et al. disclose a pull-out shelf having all of the elements stated previously. Mastrodiscasa and US 4,679,959 to Delmege et al. do not expressly disclose a pull-out shelf characterized in that the brackets are interconnected by means of at least one transverse stay which is easy to mount and allows to be assembled at the point of use.

Albano teaches a pull-out shelf assembly having brackets (18) that are interconnected by means of at least one transverse stay (42a, 42b) which is easy to mount and allows to be assembled at the point of use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a stay, as taught by Albano, modifying the pull-out shelf disclosed by Mastrodiscasa and US 4,679,959 to Delmege et al., thus providing increases surface area of the shelf for the placement of items thereon (Albano: col. 1, lines 29-44).

9. Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mastrodiscasa and US 4,679,959 to Delmege et al. as applied to claim 1 above, and further in view of Kennedy. Mastrodiscasa and US 4,679,959 to Delmege et al. disclose a pull-out shelf having all of the elements stated previously. Mastrodiscasa and US 4,679,959 to Delmege et al. do not expressly disclose a pull-out shelf characterized in that the parts of the brackets which interact with slot-shaped holes in the rack uprights are made with adjustment notches so as to allow the shelf to be mounted at different angles relative to the rack uprights. Kennedy teaches a bracket (11) (Figs. 1-4) having a part (16) of the bracket which interact with the slot-shaped holes (S) in rack

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uprights (U) being made with adjustment notches (20, 23) so as to allow the shelf to be mounted at different angles relative to the rack uprights. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the brackets with adjustment notches, as taught by Kennedy, modifying the brackets of the pull-out shelf disclosed by Mastrodiscasa and US 4,679,959 to Delmege et al., thus providing a bracket which is angularly adjustable to a number of different positions (Kennedy: col. 1, lines 29-33).

Allowable Subject Matter

10. Claims 3, 5, 6, 10 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gussack teaches a multiple position locking slide for shelves and drawers having a spring force activating an operating member; Griffin teaches a bracket for a pull-out shelf having a plurality of adjustment notches allowing for tilting of a shelf mounted thereon; US 4,610,487 to Delmage et al. teaches a multiple position locking slide having a friction member acting with engagement surfaces and Ball teaches a pull-out shelf having a multiple position locking member acting through spring force.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851.

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The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF

10/15/2003

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

